1972

Human Rights Party, An Unincorporated Association, and Jeffrey Montague v. Clyde L. Miller, Secretary of State : Brief of Appellants

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

HUMAN RIGHTS PARTY,
an unincorporated association, and
JEFFREY MONTAGUE,
Plaintiffs-Appellants,

vs.

CLYDE L. MILLER,
Secretary of State,
Defendant-Respondent.

Case No.
~~12774~~
12972

BRIEF OF APPELLANTS

**Appeal from Judgment in the Third District Court
in and for Salt Lake County.
The Honorable Stewart M. Hanson presiding**

JOHN D. O'CONNELL
A cooperating A.C.L.U.
Attorney
Twelve Exchange Place
Salt Lake City, Utah
Attorneys for Appellants

VERNON ROMNEY
Attorney General State of Utah
State Capitol
Salt Lake City, Utah
Attorney for Respondent

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STATEMENT OF NATURE OF THE CASE

This is an application for an extraordinary writ requiring the respondent to certify the plaintiff, Human Rights Party, as a political party for the next ensuing election.

DISPOSITION OF CASE BY COURT BELOW

The case was heard by the Honorable Stewart M. Hanson, on May 8, 1972, and the application for extra-

ordinary relief was denied. The respondent moved f
an amendment of the Findings of Fact and Conclusio
of Law and a hearing was held on June 7, 1972,
which time the court amended the Findings of Fa
and Conclusions of Law, but reaffirmed the denial
the extraordinary writ.

RELIEF SOUGHT ON APPEAL

The appellants seek a reversal of the court bel
and an order requiring respondent to certify plaintif
Human Rights Party, as a political party for the ne
ensuing election.

STATEMENT OF FACTS

There is no dispute as to the facts in the instan
case and they are set out in the stipulation and in th
Findings of Fact and Conclusions of Law. Briefl
the Human Rights Party attempted to qualify as
political party by filing a petition signed by over 30
registered voters declaring that the signers are or desi
to become members of the Human Rights Party an
that they desire to participate in a county organizin
convention. Included on the petition were at least te
signatures of electors residing in each of nine counti
to-wit: Box Elder, Cache, Davis, Iron, Salt Lak
Summit, Tooele, Utah, and Weber Counties. Also i
cluded on the petition were nine signatures of register
voters and three signatures of persons responde

determined not to be registered voters residing in Garfield County and two signatures of registered voters and 15 signatures of persons respondent determined not to be registered voters residing in Carbon County. The agents collecting signatures in Garfield and Carbon Counties apparently failed to verify the validity of the signatures in their respective counties.

Section 20-3-2 Utah Code Annotated (1953), requires the petition for forming a new political party to contain 500 signatures with at least ten signatures from each of ten counties. Because plaintiffs' petition failed by one vote in one county to meet the distribution requirements of the statute respondent refused to certify the party for a ballot position.

There are 29 counties in the State of Utah with populations varying from 666 in Daggett County to 458,000 in Salt Lake County, with well over half of the population in the state residing in the two most populous counties.

ARGUMENT

THE DISTRIBUTION REQUIREMENT OF SECTION 20-3-2 UTAH CODE ANNOTATED (1953) IS IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION IN THAT IT APPLIES A RIGID AND ARBITRARY FOR-

MULA TO SPARSELY SETTLED COUNTIES AND POPULOUS COUNTIES ALIKE DENYING EQUALITY AMONG CITIZENS IN THEIR EXERCISE OF THEIR POLITICAL RIGHTS.

In order to form a new political party with the right to place candidates on the ballot in Utah, a petition must be submitted to the Secretary of State signed by at lease five hundred registered voters declaring that they are members or wish to become members of the party and participate in county organizing conventions. Plaintiffs have no quarrel with this requirement and have complied with it. However, Section 20-3-2 U.C.A. (1953) requires that the petition contain the signatures of at least ten registered voters in each of at least ten counties. Plaintiff's fell one signature short of complying with this provision and maintain that this geographical distribution requirement is void since it puts arbitrary geographical limits on the exercise of political rights and arbitrarily discriminates against those citizens who live in heavily populated counties. For example, a new political party could be formed by 500 voters who happen to live spread out over ten small counties. However, 200,000 voters who happened to all live in one or two counties would be powerless to put candidates of a new political party on the ballot. Utah, of course, has counties with widely varying populations and could have a new political party which theoretically could overwhelmingly carry an election but not be entitled to put candidates on the ballot because of the

arbitrary distribution requirement. Patent discrimination of this type on the basis of place of residence is obviously in violation of the fourteenth amendment and the recent court decisions are unanimous in so holding.

The United States Supreme Court laid down a clear mandate in *Moore v. Ogilvie,* 394 U.S. 814 (1969), striking down the Illinois statute which required 200 signatures from each of fifty counties as being in violation of the Equal Protection Clause of the fourteenth amendment to the United States Constitution. The only distinction between the Illinois statute and the Utah statute is one of numbers. However, it was not the required number of signatures and counties that the court found offensive but the fact that the statute arbitrarily discriminated on the basis of geography. In *Socialist Workers Party v. Hare,* 304 F.Supp. 534 (E.D. Mich. 1969), which attacked a provision requiring 100 signatures from each of ten counties (out of 83 total counties), the Secretary of State argued that the lesser burden distinguished the Michigan statute from the Illinois statute. The court stated in answer:

> However, it is clear that this difference is of no constitutional significance. The following portion of the *Moore v. Ogilvie* opinion is as true of the Michigan statute as it was true of the Illinois statute. "This law applies a rigid, arbitrary formula to sparsley settled counties and populous counties alike, contrary to the constitutional theme of equality among citizens in the exercise of their political rights. The idea that one group can be granted greater voting strength

than another is hostile to the one man, one vote basis of our representative government." 394 U.S. at 818.

Defendants also attempt to distinguish the Illinois statute and the Michigan statute by asserting that the Michigan statute imposes substantially less burden on a new political party than does the Illinois statute. However, an inquiry into relative burden is foreclosed by the Supreme Court. The rights protected in *Moore v. Ogilvie* are not those of the political party candidates, but rather *the rights of the voters to equality in the exercise of their political rights.* 304 F.Supp. at 536.

Moore v. Ogilvie, supra, was a logical sequel to the earlier cases striking down discriminatory laws which diluted the political power of persons living in populous areas. See, *e.g., Barker vs. Carr,* 369 U.S. 186 (1962); *Reynolds v. Sims,* 377 U.S. 533 (1964); *Gary v. Sanders,* 372 U.S. 368 (1963). In *Williams v. Rhodes,* 393 U.S. 23 (1968), the court held that a state must show a compelling interest in restrictions on the forming of new political parties. In *Moore,* the court merely combined the reasoning of the apportionment cases with that of *Williams v. Rhodes* and arrived at the inescapable conclusion that requiring an arbitrary geographic distribution of voters seeking to qualify a new political party is a violation of the fourteenth amendment.

The *Moore* doctrine has been applied in *Socialist Workers Party v. Hare, supra; Socialist Workers Party v. Rockerfeller,* 314 F.Supp. 984, aff'd 400 U.S. 86;

(1970); *Baird v. Davoren,* 40 Law Week 2588 (E.D. Mass. 1972) (Three Judge Court.)

There can no longer be any doubt that the distribution requirement such as contained in Section 20-3-2 Utah Code Annotated (1953), is completely void. The ruling of the court below that appellants would not be entitled to relief because they did not expend all reasonable effort to comply with the statute is patently in error. There is no doctrine in constitutional law requiring a person to exhaust every reasonable effort to comply with a statute void on its face before he may be heard to complain about the invalidity of the statute. The argument that only persons finding it impossible to comply with unconstitutional statutes may attack them is completely absurd and not supported by any authority known to counsel.

CONCLUSION

It is respectfully submitted that the distribution requirement of Section 20-3-2 Utah Code Annotated (1953), is unconstitutional on its face, and appellants having complied with all other provisions of the statute, that respondent should certify the appellant, Human Rights Party, as a political party for the next ensuing election and place its candidates on the ballot.

Respectfully submitted,

JOHN D. O'CONNELL
A Cooperating A.C.L.U. Attorney
Attorney for Appellants